

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF TENNESSEE, AT GREENEVILLE:

CHRISTINE BEARDEN, ET AL

VERSUS

CASE NO.: 2:19-CV-55-CLC-MCLC

BALLAD HEALTH, ET AL

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO DISMISS (DOC. 27)

Come plaintiffs, by and through counsel, and, for response to the Motion to Dismiss (**Doc. 27**), filed by certain defendants in the above-captioned case, say as follows:

1. Plaintiffs have standing to bring this litigation in this forum, having alleged an “Article III” case and controversy, and, thus, these defendants’ reliance on **FRCP 12 (b) (1)** is not well-taken.

2. Plaintiffs (a) have, in fact, contrary to the assertion of these defendants, alleged antitrust injury, and (b) have more than adequately plead the requisites of the Clayton Act, thus showing that these defendants’ reliance on **FRCP 12 (b) (6)** on this grounds is not well-taken.

3. Despite defendant, Ballard Health’s, claim to the contrary, it has no immunity under either Federal antitrust law or by the state-action immunity doctrine/exception, and, thus, it may not rely upon this ground for dismissal of this lawsuit, pursuant to **FRCP 12 (b) (6)**.

Attached hereto and incorporated herewith as support of these contentions are certain documents, which are consecutively numbered, and which shall be referred to in the plaintiffs’ Memorandum of Law, which is filed separately, contemporaneously with this Response.

WHEREFORE, plaintiffs respectfully request this Honorable Court to overrule these defendants’ Motion to Dismiss (**Doc. 27**), and, thereafter, to order these defendants to answer the Complaint filed in this case, so that the case may proceed to trial on its merits.

CHRISTINE BEARDEN, ET AL

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CERTIFICATE OF SERVICE

I hereby certify that on **June 28, 2019** a copy of the foregoing **Plaintiffs' Response to Defendants' Motion to Dismiss (Doc. 27) (also including exhibits, etc.)** was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

S/Francis X. Santore, Jr.
Francis X. Santore, Jr.